

Court of Appeals, State of Michigan

ORDER

Joyce McMaster v The Memorial Hospital

Docket No. 276383

LC No. 05-002806-NH

Pat M. Donofrio
Presiding Judge

Henry William Saad

Deborah A. Servitto
Judges

Pursuant to MCR 7.205(D)(2), the Court orders that the Shiawassee Circuit Court's February 5, 2007 opinion and order granting summary disposition in favor of defendants Setty and Farmer is REVERSED. Plaintiffs' affidavit of merit did not conform to MCL 600.2912d(1) since it did not identify the specific physician defendants, the standard of care applicable to those defendants, or the manner in which they breached that standard of care. *Glisson v Gerrity*, 274 Mich App 525, 533-534; 734 NW2d 614 (2007). However, defendants were not entitled to summary disposition based on the statute of limitations since filing the complaint and affidavit of merit still tolled the running of the statute of limitations. *Kirkaldy v Rim*, 478 Mich 581; 734 NW2d 201 (2007). Rather than grant summary disposition in favor of defendants, the proper remedy would have been to dismiss plaintiffs' action without prejudice and allow plaintiffs to file a complaint accompanied by a conforming affidavit of merit within whatever time remained in the limitations period. *Id.* Plaintiffs are entitled to file a new complaint accompanied by conforming affidavit[s] of merit within the remaining portion of limitations period calculated from the date of the clerk's certification of this order.

The Court retains no further jurisdiction.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

SEP 13 2007

Date

Sandra Schultz Mengel
Chief Clerk